IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

Bail Appl..No. 5680 of 2007()

CMP.2035/2007 of DISTRICT COURT, KOTTAYAM
CRIME NO.511/07 OF CHANGANACHERRY POLICE STATION, KOTTAYAM.

.....

PETITIONER:

JOSEKUTTY @ JOSE JOSEPH,
KIZHAKKETHALAKKAL,
PULLANGADI,
CHAMPAKULAM.

BY ADV. SRI.SURIN GEORGE IPE

RESPONDENTS:

STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5680 OF 2007

Dated this the 20th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under Sec.377 read with Sec.511 of the IPC. The crux of the allegations is that the petitioner attempted to have unnatural sexual intercourse with the de facto complainant – a child aged about 10 years, who, unaccompanied by his parents, had gone to attend a marriage. The crime has been registered on the basis of a complaint lodged by the child. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations are totally false and incorrect. At any rate, the allegations cannot constitute an act of unnatural sexual intercourse or even an attempt to commit such offence.

3. In the nature of the contentions, the Case Diary was

placed before me for my perusal. I have perused the same. I shall, at the early stage of the investigation, scrupulously avoid any detailed discussions on merits about the acceptability of the allegations or the credibility of the data collected. The learned Sessions Judge had earlier dismissed the application for anticipatory bail. The facts have been adverted to in detail in that order. Suffice it to say that I find absolutely no features in this case which would justify the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This, I am satisfied, is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

4. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-
(R. BASANT, JUDGE)

Nan/

//true copy// **P.S. to Judge**